IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 104.

STATE OF NEW JERSEY AND BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY,

Appellants,

vs.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,

Appellee,

and

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

APPELLEE'S BRIEF ON THE MERITS.

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Statutes and Rules Involved.

In addition to the constitutional provisions quoted in Appellants' Statement under this head, we note the following statutes and rules of the Interstate Commerce Commission (text being reproduced in the Appendix to this Brief):

Interstate Commerce Act, excerpts from §1 (49 U. S. C. §1)

Interstate Commerce Act, §13a (49 U. S. C. §13a)

Interstate Commerce Act, §202 (49 U. S. C. §302)

Rules of Interstate Commerce Commission; 49 Code of Federal Regulations, §1.2, §1.4(c), §1.5(d), §1.19, §1.20, §1.23(a), §1.27(a), §43.1 through §43.8.

Questions Presented.

We would restate the questions as follows:

1. Whether the question of applying §13a(1) or §13a(2) of the Interstate Commerce Act involves anything more than a matter of procedure rather than an issue of jurisdiction under the facts of this case, especially since Appellants have recognized, for the first time on this appeal, that the Commission could have acted under §13a(2) without a new application to the State agency.

2. Whether the District Court correctly ruled that Susquehanna's operation or service, sought to be discontinued, was governed by the procedures of §13a(1), and consequently enjoined permanently the I. C. C. order which dismissed the notices filed with it?

3. Whether the procedures of §13a(1) fail to cover an operation or service which is clearly interstate rail transportation of passengers, merely because the intraterminal transfer of passengers within the terminal area at New York is by special motorcoach service connecting with the trains and crossing the State line?

4. Whether, if the District Court was wrong, it was proper for the I. C. C. to have dismissed the notices on jurisdictional grounds instead of treating the matter as an application under §13a(2), affording such opportunity to the State agency to act initially on the proposed discontinuance as the facts may have required?

Statement of the Case.

In 1953 Susquehanna emerged from a bankruptcy reorganization of 16 years' duration (R. 31), with capitalization reduced from $42 million to $16 million, and fixed interest debt reduced from $12 million to $5 million (R. 52); in approving the plan of reorganization, the I. C. C. estimated that earnings available for interest and other corporate purposes would exceed $700,000 annually (R. 52). These earnings were never realized (R. 52). Its major freight customer, the Ford Motor Company, vacated the Edgewater plant served by Susquehanna and relocated in Mahwah, N. J. (R. 53, R. 54). Freight earnings, which had been $1,148,764 in 1950 (R. 53) declined to a deficit of $185,045 in 1959 (R. 50). Susquehanna sustained an unbroken line of out-of-pocket losses from passenger operations in every year since emerging from reorganization (R. 50), and since the end of 1957, freight operations have also been at a deficit. (R. 50, R. 32, R. 55).

In April 1956, Susquehanna instituted proceedings before appellant Board (R. 34, par. 6); extended hearings were not concluded until April, 1957 (R. 35, par. 7). At that time the New Jersey legislature passed Senate Concurrent Resolution No. 20 (1957) purporting to declare as public policy that abandonment or curtailment of rail passenger service be denied pending receipt of the report of a bi-state Rapid Transit Commission, and the Board ordered further proceedings suspended (R. 35, par. 8). The New Jersey Supreme Court held the Concurrent Resolution to be ineffective. (*In re N. Y., Susquehanna and Western R. R. Co.*, 25 N. J. 343, 136 A. 2d 408, decided November 25, 1957) (R. 35, par. 9), and in December the Board entered an order permitting some but not all of

the curtailment sought. Susquehanna appealed, and after some seventeen months, secured further relief from the Appellate Division of Superior Court (*Susquehanna, etc. Ass'n v. P. U. C.*, 55 N. J. Super. 377, 151 A. 2d 9, decided May 1, 1959) (R. 35, par. 10). An unnecessary loss of nearly half a million dollars caused by the forced continuance of trains ultimately found not to be required, was suffered as a result of this delay (R. 35, par. 11).

By the end of 1960, Susquehanna's passenger train service consisted of three commuter trains eastbound in the morning, and three westbound in the evening (R. 35, 36, par. 13). Each train consisted of a diesel engine and one passenger car (R. 30). For the year 1960, this operation involved an "above-the-rail" cost of some $117,000 (crew wages alone being over $100,000, while total passenger revenue was only $65,000) (R. 58).

As shown by its suburban time table (R. 45) these trains carry passengers between various New Jersey points (Butler, N. J. being the most westerly, 37.9 miles from New York) and the Port Authority Bus Terminal at 41st St., New York City. Physically, the eastbound passengers leave the trains at Susquehanna Transfer (a transfer point and not a station, no tickets being sold to or from that point) and from there are transferred to the 41st St. Bus Terminal on special contract buses operated for the rail passengers (R. 30, R. 46 to 49). The westbound routine is the same; train passengers only may board the transfer bus at the Bus Terminal and are taken to Susquehanna Transfer where they board the train. The buses connect with the trains in both directions; they do not pick up or discharge any passengers along the way. Susquehanna passengers at Susquehanna Transfer have no option to go anywhere except on the transfer bus eastbound and on the connect-

ing train westbound; there are no other authorized entrances or exits to or from Susquehanna Transfer (R. 47).

As is clear from the footnote to the majority opinion below, Susquehanna carries nearly all its passengers to and from New York City (R. 17, R. 63 to 68, R. 94).*

On December 29 and 30, 1960, Susquehanna posted, and on December 30, 1960, served and filed notices complying with section 13a(1) of the Interstate Commerce Act, announcing that the trains mentioned would be discontinued at 12:01 A. M. January 30, 1961 (R. 44). It also filed with the I. C. C. a detailed Statement, as required by its rules, setting out all pertinent facts, including those set out above (R. 29 to 74).

On January 9, 1960, appellants State and Board filed a Petition to Dismiss "without prejudice" for asserted lack of jurisdiction, (R. 75) and on January 18, 1960, without awaiting the expiration of the 20 day period allowed by I. C. C. rules for the filing of a Reply by Susquehanna, the I. C. C. entered an order of dismissal, but not "without prejudice" as Appellants had asked (R. 87, R. 7). Susquehanna nonetheless filed its Reply within the proper time (R. 80), and thereafter an Amended Reply (R. 91) as well as a Petition for Reconsideration (R. 86), which the State and Board opposed. Upon denial of that Petition, (R. 8) the suit below was promptly initiated (R. 1).

At the trial below, defendants the United States and the I. C. C. explicitly recognized that Susquehanna's passenger

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* The table there given works out to an average daily total of 245.8 passengers (who make 2 trips each day, one eastbound and one westbound), of which only 28 travel intrastate. The most heavily patronized eastbound train, No. 910, with 126.4 average daily passengers carries only 6.3 passengers intrastate; and the most heavily patronized westbound train, No. 923, with 120.1 average daily passengers, carries only 1.5 passengers intrastate.

service between New Jersey and New York constitutes "interstate rail transportation"; appellants State and Board were silent on the point in their brief, and when questioned conceded that their position in that regard was the same as that of the United States and the I. C. C.

The decision of the District Court was based on the obviously interstate nature of the passenger service involved (R. 17) especially in light of earlier determinations by the I. C. C., to which appellants State and Board were parties, holding that when Susquehanna's trains are at Susquehanna Transfer, they are within the carrier's terminal area at New York; that the transfer of passengers between that point and the 41st Street Bus Terminal, by special contract bus, is an intraterminal transfer, is required by the Act to be considered as performed by Susquehanna, and is to be regarded and regulated as rail transportation (R. 46 to 49). This statutory scheme, expressed in section 202(c) of the Act (49 U. S. C. section 302(c)) was in effect when Congress enacted the 1958 Transportation Act which included the provisions now referred to as section 13a of the Act. The majority found that both factually and as a matter of law, the specific train-bus arrangement in this case was a single, integrated service, the transfer within the terminal area provided by Susquehanna being incidental to and part of the rail service (R. 22). The majority opinion also rested on the entire history which led to the enactment of section 13a, and held that it was to be read as remedial legislation, and not with unreasonable narrowness and strictness (R. 19 to 22).

The dissenting opinion adopted the position taken by appellants State and Board, looking at the single word "train", and giving no effect to the whole phrase: "the discontinuance or change * * * of the operation or service of any train * * *" (R. 23 ff).

Summary of Argument.

A. By the enactment of section 13a in 1958, 49 U. S. C. 13a, the Congress exercised its power to regulate interstate and foreign commerce by investing the I. C. C. with paramount authority to deal with the change or discontinuance of the operation or service of a train or ferry by a railroad engaged in interstate commerce. The authority so invested applies to both interstate and intrastate operation or service; but different procedures were provided for interstate and intrastate matters.

Under §13a(1), which applies when the operation or service is interstate, the carrier files with the I. C. C. (and also posts and serves) a 30 day notice of the proposed discontinuance or change, and the authority to do so is granted directly by the statute unless the I. C. C., upon making the requisite findings, orders service continued for up to one year. The I. C. C. is also empowered to order interim operations pending investigation and hearing, but not for a period longer than four months from the noticed date.

Under §13a(2), which applies when the service is intrastate, the carrier may make the change or discontinuance if granted permission by the I. C. C., after full hearings and on making the requisite findings, on petition for such permission. This permission may be granted by the I. C. C. (a) if the constitution or statutes of the State prohibit the discontinuance or change; or, (b) if the State regulatory body denies, in whole or in part, an application for the discontinuance or change; or (c) if the State regulatory body does not act finally on such an application within 120 days after its presentation.

Hence, since the I. C. C. is given authority to act in either instance, the question whether a particular operation

or service may be changed or discontinued under one provision or another does not involve a question of "jurisdiction" in the traditional sense, and should a carrier initiate an effort to discontinue or change its operation or service under the wrong provision, the proper course is not to "dismiss for lack of jurisdiction" but to take such final action on the merits as the facts may require, with appropriate correction of the procedure.

Appellants have now represented to this Court (in their Brief on Susquehanna's motion seeking suspension or modification of a temporary injunction pending appeal granted by the District Court), that the State agency had already failed to grant Susquehanna the permission to discontinue the subject trains in its last application before the §13a(1) notices were filed, and that the I. C. C. had authority to act under 13a(2) without Susquehanna's having to make a new application to the State agency as a prerequisite to authorization to discontinuance under §13a. This fact excludes any possibility of "lack of jurisdiction" in the I. C. C.

B. The long history of the serious impact, on interstate transportation by railroad, of obstructive attitudes in some States led Congress to enact §13a. As the power to deal with interstate commerce is federal, its exercise by a statute is not to be confined by a narrow construction for the purpose of preserving the reserved power of the States. As the Act itself, and the section in issue, are remedial legislation, they are to be liberally construed.

Since 1940, the Act has expressly provided in §202(c) that transportation by motor vehicle, by or for a railroad, for intraterminal transfer of passengers (a) is not to be governed by the Motor Carrier Act of 1935, and (b) is to be regulated in the same manner as transportation by railroad,

49 U. S. C. §302(c). As Susquehanna's passenger operation and service are almost entirely for interstate commutation between New Jersey and New York, and as its terminal is New York, the discontinuance or change of such operation or service is governed by §13a(1). When Susquehanna's trains are at Susquehanna Transfer, they are within the carrier's terminal area at New York, and its passengers are transferred, within that terminal area, to and from the Port Authority Bus Terminal in Manhattan by special motor coaches that carry only the rail passengers. The motor coaches are operated on schedules to meet the trains, and for no other purposes and do not pick up or discharge passengers along the route. They serve precisely the same functions the trains would if it were physically possible for them to continue to New York. The motor coach service so provided by Susquehanna (in fulfillment of tickets it issues for transportation to and from New York) is an integral part of the train operation, and is used by some 90% of Susquehanna's passengers for interstate commutation. These interstate passengers cannot get to and from New York on Susquehanna's line except by the use of the motor coach transfer operation, and it is accordingly to be treated, in contemplation of law, in the same fashion and by the same provisions as apply to trains.

The identification of a carrier's terminal area is a question of fact to be decided on the merits of each case, and it has previously been decided in earlier proceedings to which Appellants were parties, and which are *res judicata*, that Susquehanna Transfer is within the carrier's terminal area at New York.

C. The contention that the word "train" is to be taken literally, physically and narrowly, as urged by Appellants, will lead to the absurd result that Susquehanna could not

effectively discontinue its interstate passenger service under either §13a(1) or §13a(2). This is because if proceedings were had under §13a(2), as Appellants say they should, and if Susquehanna secured a permissive order, it could only apply to the "trains", and it would be unable to discontinue the transfer bus;

§13a(2) uses exactly the same language as §13a(1) in this connection, and the order (by Appellants' construction) could not cover the bus (a) because a "bus" is not named and (b) because the bus is surely not intrastate. The result would be absurd because all instances of operation and service of trains by railroads engaged in interstate commerce are covered by the combination of the two paragraphs of the section, and because Congress could hardly have intended that the bus be required to operate when there are no passengers to ride it.

D. The legislative discussions in the course of consideration and enactment of this section do not address themselves to the kind of problem involved in this case, and are of little aid, if any, in the search for legislative intent. All of the excerpts reproduced in the record took place in relation to earlier versions set out in the House and Senate bills, and before the final text was reported out of Conference Committee and enacted.

E. The particular construction incidentially made by the I. C. C. in entering the order of dismissal is not an administrative interpretation which can affect the decision here; construction of the statute is for the court, and decision of the merits on the facts is for the I. C. C.

ARGUMENT.

POINT ONE.

The issue presented by this appeal does not really involve a question of "jurisdiction" of the I. C. C., but merely a question of procedure.

This is a simple case. Its decision will hardly be difficult and the result, whatever it may be, is unlikely to be notable for either establishing or altering any significant rule or principle of law.

This is clear from the Commission's own rules, the pertinent parts of which are set out in full text in the Appendix to this brief. We note here that the "Petition" under the §13a(2) procedure is to set forth the same content and information as is required for a "Statement" for §13a(1) procedure, with only slight variation. Compare 49 C. F. R. §43.6 with 49 C. F. R. §43.4(b) and 43.5. The form of execution is the same for both under 49 C. F. R. §43.7, as is the number of copies under 49 C. F. R. §43.8. The rules also contain the salutary direction that:

> "The rules in this part shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented." 49 C. F. R. §1.2. (*Cf.* Fed. Rules of Civ. Proc., Rule 1).

Amendments are permitted, under 49 C. F. R. §1.20, and two or more "grounds of complaint" may be joined so long as they concern the same principle, subject or state of facts. 49 C. F. R. §1.27(a).

And the admission by Appellants (made for the first time in their representations to this Court in their separate Brief in opposition to Susquehanna's application for an

order to suspend or modify the temporary injunction), that the Commission has the present authority to enter an order under §13a(2), as the result of the partial denial of Susquehanna's previous application for complete discontinuance of these same trains, *without again applying to the State agency in the first instance*,* establishes beyond question that the Commission was wrong in dismissing for "lack of jurisdiction", as well as that the disagreement is merely one about procedure.

The case is simple and its decision not difficult because the question raised by the appeal is whether Susquehanna, which transports commuters between New Jersey and New York, may discontinue its three trains by following the procedure of 49 U. S. C. 13a(1), or whether it may do so only by the procedure of 49 U. S. C. 13a(2).

If the selection of procedure is to be governed by the functional nature of the operation or service, recognizing that Susquehanna does carry all but a few of its daily passengers between two States (R. 17, footnote), the judgment of the District Court will be affirmed.

On the other hand, if function is ignored, and if the operation or service involved is regarded as wholly intrastate, the procedure for discontinuance will be that of 49 U. S. C. 13a(2).

In any case, the proceeding will be but another unhappy example of the triumph of legalism over substance, for its final settlement will have involved two determinations by

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* The representation made to this Court by Appellants in the brief referred to is as follows:

> "Furthermore, Section 13a(2) does not designate the time within which a matter may be brought to the I. C. C. after proceedings before a state regulatory agency. Hence, there is relief available to the Appellee before the I. C. C. by petitioning that body from the Board decision in Docket No. 5912-11884 • • • where the Appellee was granted only a portion of the relief it sought."

the Interstate Commerce Commission, a review by a statutory 3-judge district court, and a final ruling by the highest court in the land. All of this will be for the purpose of resolving a question of procedure. There will have been some two years consumed in the process, during which the service involved will have been continued in the face of the undeniable facts of steady loss, not only from the operation involved, but from all operations, passenger and freight.

We say that the dispute involves a question of procedure; and not one of jurisdiction, because while the argument of Appellants throughout is constructed on a theme which they characterize as a conflict of jurisdiction in the dichotomy of national and state regulatory agencies, the statute is plain in its vesting of paramount authority in the national regulatory agency, in both subdivisions of the section.

The procedural difference is this: in cases governed by section 13a(1), the authority to discontinue flows from a direct grant from Congress to the carrier, without the permissive order of any regulatory agency, and the Commission may prevent its exercise by an order to continue service; in cases governed by section 13a(2), the authority to discontinue resides in a permissive order of the Commission which can be entered only after a local agency has either declined to enter such an order or has failed to act after 120 days.

Not only is this plain from the text of the statute, but it was expressly so decided in the Second Ferry Cases, *State of New Jersey, et al.*, v. *United States, et al.*, (two cases), 168 F. Supp. 324 and 342 (D. C. N. J. 1958), *aff'd.* 359 U. S. 27, *reh. den.* 359 U. S. 950 (1959).

There is accordingly some semantic confusion in the argument as well as in the prior proceedings. There never

really was any question whether the Commission had "jurisdiction". Under the statute, there was no "application", in the traditional sense, but a posting and serving of notices of proposed discontinuance and a filing of the notices (together with a "Statement" required by regulation) with the Commission so that it might undertake the intended investigation and hearing and make a determination of the elements of (a) public necessity and convenience and (b) burden on interstate commence.

Under both 13a(1) and 13a(2), federal jurisdiction is paramount, whether the operation or service involved be interstate or intrastate. Substantively, the two provisions are together intended to erase the ability of State agencies to delay and obstruct prompt and consistent decisions on the merits of proposed changes or discontinuances. In both cases, opportunity for presentation and consideration of matters of local concern is provided for in the proceedings before the I. C. C.

That intention was frustrated in the present case by the insistence of the State agency on technical assertions going to "jurisdiction" (actually, merely procedure) and by the unwillingness of the I. C. C. to discharge its statutory duty by acting in the matter on the merits while giving full scope to the concept of accommodation between federal and state interests. Hence, instead of a cooperative endeavor to achieve a solution to an obviously serious problem, we find the same kind of ceremonial dance as is exemplified by *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341 (1951).

Yet, since federal jurisdiction is clearly intended to be the final solvent under both parts of the section, the I. C. C. chose not to employ procedural courses which would have reached the merits and, in the light of the overwhelming

strength of the facts, would have tended to make the present issue one of secondary or academic interest only.

The real question before the Commission was whether the matter of discontinuance was to be dealt with by the procedure of section 13a(1) or that of 13a(2). For both procedures, findings in respect to the same two elements are prescribed. For both procedures, the Commission was free to assign the matter for initial inquiry by the State agency, in the manner described with approval in *Colorado* v. *United States*, 271 U. S. 153, 167 (1926). There the Court, in discussing the procedure for abandonments under section 1(18) (under which the questions are closely analogous), observed that every projected abandonment of any part of a railroad engaged in both interstate and intrastate commerce may conceivably involve a conflict between state and national interests, and that:

> "In practice, representatives of state regulatory bodies sit, sometimes, with the representatives of the Commission at hearings upon the application for a certificate. *Occasionally, the Commission leaves the preliminary enquiry to the state body.* And always consideration is given by the Commission to the representations of the state authorities." (Emphasis added).

More recently, a similar arrangement was recognized as proper and desirable in *Woodruff* v. *United States*, 40 F. Supp. 949 (D. Ct. Conn. 1941). There, an abandonment application under section 1(18) was assigned by the I. C. C. for hearing at Hartford "before the Public Utilities Commission of Connecticut." Official reporters of the I. C. C. recorded and transcribed the evidence and transmitted it to the I. C. C., and both the state agency and the I. C. C. made independent findings.

The obviously preferable course, for a prompt and efficient administration of justice, would have been for the Commission to assign the matter for preliminary inquiry by the local agency and then make the factual determinations specified by the statute. If those determinations were such as to support the proposed discontinuance, it could have entered an affirmative order permitting discontinuance. This would have rendered moot the incidental dispute in respect to procedure.

Such a course would have rendered quite immaterial the wasteful dispute which has been generated by its summary dismissal of the notice, without hearing or opportunity for hearing even on the motion to dismiss, not to mention the merits (R. 89, paragraph g), and would have prevented the further depletion of Susquehanna's substance in the continued operation of a service which cannot be supported on any theory.

It will be observed that this assumes a denial or refusal to act on the part of the state agency. The assumption is reasonable because, having all the necessary facts in the Statement (R. 29 to R. 74), and the broad power and duty of general supervision and regulation over all public utilities entrusted to it by N. J. Rev. Stat. 48:2-13, it was free to take the local action which it insists is its "right" if it was sincerely desirous of exercising it. Nor is N. J. Rev. Stat. 48:2-24, as amended by L. 1959, ch. 55, any obstacle. That act forbids railroads maintaining passenger service from discontinuing, curtailing or abandoning such service without obtaining permission from the board, after notice and hearing. (The amendment, it is interesting to note, was enacted the year after enactment of section 13a). Insofar as the service between the Transfer and Manhattan is concerned, the law is settled that the State has no power

to act at all, as the service goes beyond the state boundary. *Erie R. R. Co.* v. *State*, 51 N. J. Super. 61 (App. Div. 1958).

Viewed in this perspective, it is plain that the litigation which has ensued is really on an artificial issue which could have been entirely avoided if the I. C. C. had not chosen to abdicate its functions by an order whose nature is typical of the technicalities of ancient common law pleading at their worst. It is a source of some dismay to find, at this late date, that not only do such obfuscations over technicalities persist, but that they are practiced by administrative agencies intended to function without the confinement of rules that have traditionally subjected our courts to criticism.

Thus, it is plain that the argument of the Appellants is not really one over "jurisdiction", but one over mere procedure.

It follows that on this appeal the choice is not one between affirmance and reversal. If the judgment of the District Court was right, it should be affirmed and that will end the matter unless the Commission determines that there should be an order for a 1-year continuance of service. If, on the other hand, the District Court was wrong, and the matter is to be governed by the procedure of 13a(2), then there should be, not a reversal but a modification, with a remand under which both the state agency and the Commission may act according to the arrangements approved in *Colorado* v. *United States*, *supra*, and the matter concluded on the merits.

Of course, it may be that in the event of an affirmance, Appellants may conclude not to proceed further and may not request the Commission to consider the entry of a 1-year order of continuance. On this question, Appellants will be better able to inform this Court of their intentions.

The material set out in the Statement (R. 29 to R. 74), in the light of the facts developed since its preparation, which are routinely reported to both the state agency and the Commission, may well satisfy them that while there may be a dispute over procedure, there is no dispute over the merits.

POINT TWO.

The District Court correctly decided that Susquehanna followed the proper and applicable procedure by acting pursuant to section 13a(1) rather than section 13a(2).

We here take up the matter of construing the statute. Noting that its construction involves a matter of procedure, the analysis to follow will nonetheless assume, for the purpose of argument only, that the issue is "jurisdiction".

Appellants argue, in effect, that section 13a as enacted discloses a congressional intent not to exercise the federal power in respect to intrastate trains, and that their regulation is one of the powers reserved to the States. They argue that, in consequence, the statute is to be strictly and narrowly construed to preserve the exercise of state authority, and that this objective can only be achieved by taking the words "train" and "ferry" in their physical and literal sense only, rather than in their functional sense, and by ignoring the disjunctive "operation *or* service" (Emphasis added). They are also compelled to reject the applicability of 49 U. S. C. §302(c). The argument is unsound and cannot be supported.

The *power* to deal with interstate commerce is in its nature federal, and it may be exercised by the States only because of non-action by Congress; once this is recognized,

as it was in *Western Union* v. *Boegli*, 251 U. S. 315, 316 (1920), it follows that the Interstate Commerce Act (or amendments to it bringing new subjects under the administrative control of the Commission, as was the case in *Western Union* v. *Boegli*) is not to be "narrowly construed so as to preserve the reserved power of the State over the subject in hand." *Idem.*

Even before the enactment of section 13a, it was well settled law that the Interstate Commerce Act applied to carriers engaged in the transportation of persons by railroad from state to state, "including terminal facilities of every kind used or necessary in the transportation" of persons, and including "cars and other vehicles"; and also:

> "That the service is performed wholly in one State can make no difference if it is a part of interstate carriage".

United States v. *Union Stock Yard*, 226 U. S. 286, 303-304 (1912); and see, also, *California* v. *Taylor*, 353 U. S. 553, at 554 and 561 (1957) holding that the State Belt Railroad, though located entirely within the State of California, was engaged in interstate commerce and was governed by the Interstate Commerce Act.

And there is also the admonition that:

> "It must be kept always in mind that the Interstate Commerce Act . . . . is remedial legislation requiring a liberal interpretation to effect its evident purpose."

Interstate Commerce Commission v. *Weldon*, 90 F. Supp. 873 (D. C. Tenn. 1950), aff'd on op. 188 F. 2d 367 (C. A. 6th, 1951), cert. den. 342 U. S. 827 (1951).

This court held, in *Chicago* v. *Atchison, etc. Co.*, 357 U. S. 77, 87-88 (1958), that:

> "National rather than local control of interstate railroad transportation has long been the policy of Congress. It is not at all extraordinary that Congress should extend freedom from local restraints to the movement of interstate traffic between railroad terminals. Serious impediment to the efficient and uninterrupted flow of this traffic might well result if the city could deny the railroads the right to transfer passengers by their own vehicles or by those of their selected agents."

And, of course:

> "Any state law which conflicts with the federal rule governing interstate carriers" [the Hepburn Act, 49 U. S. C. §1(7)] "must therefore give way by virtue of the Supremacy Clause" [U. S. Const., Art. VI.]

Francis v. *Southern Pacific*, 333 U. S. 445, 450 (1948).

Turning, then, to the statute to be construed, we find that it authorizes "any carrier or carriers subject to this chapter", to file with the Commission, mail to the Governor of each State affected, and post in every station served, at least 30 days' notice of a proposed discontinuance or change in the operation "or service" of an interstate train or ferry. Upon the expiration of the notice period, the carrier may discontinue or change the noticed operation or service "except as otherwise ordered by the Commission pursuant to this paragraph", notwithstanding the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before any court or State authority to the contrary.

The Commission is then authorized (1) to order a continuance pending hearings "but not for a longer period than four months" beyond the noticed discontinuance

date, and, (2) if it finds that the operation or service (a) is required by public convenience and necessity and that (b) it will not unduly burden interstate or foreign commerce, it may order a continuance in whole or in part (or a restoration if already discontinued) for a period not to exceed 1 year from the date of the order.

Beyond dispute, Susquehanna is a "carrier subject to this chapter". That fact is clear from the declarations of 49 U. S. C. §1, as Susquehanna is a common carrier engaged in the "transportation" by "railroad" of persons from one State to another. "Transportation", by 49 U. S. C. §1(3)(a) *includes* "locomotives, cars, *and other vehicles*", and all "facilities of shipment or carriage", irrespective of ownership; while "railroad", by the same clause, includes all "terminals and terminal facilities of every kind used or necessary in the transportation of persons."

What about the shuttle bus? Motor vehicles were not regulated at the federal level until the enactment of the Motor Carrier Act of 1935, 49 U. S. C. §301 ff. In enacting that law, Congress said two things about the kind of shuttle buses involved here:

> . . . first, it said *negatively* that the provisions of the Motor Carrier Act "shall not apply" to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to Part I . . . "in the performance within terminal areas of transfer, collection or delivery service", and
>
> . . . second, it said *affirmatively* that "such transportation" [i.e., by motor vehicle] *shall be considered* to be performed by such carrier, . . . and *shall be regulated* in the same manner *as*, the transportation

by railroad, . . . to which such services are incidental." (Emphasis added).

From these provisions alone, we submit, an ordinary construction leaning neither toward nor away from federal or state interests requires the conclusion that Susquehanna properly proposed the discontinuance of the "operation or service" of a train from a point in one State to a point in another. The intent of Congress is clear: when a rail carrier employs motor buses to transport passengers within a terminal area, it has commanded that such transportation "shall be regulated" in the same manner as the transportation by railroad to which the transfer service is incidental. The provision is mandatory, leaving no room for exception, and it was part of the law when section 13a was enacted. Its application here requires nothing more novel than the concept, daily applied by every lawyer and judge, that the bus is to be regarded or considered as though it were a train; i.e., in contemplation of law, Congress has declared that it is.

The underlying principle is a simple one of broad application. It has been applied to other subjects as well, as in the ruling that the movement of goods by an air carrier, to and from and between airports, by motor vehicle, is "air transportation". *City of Philadelphia* v. *Civil Aeronautics Board*, 289 F. 2d 770 (C. A. D. C. 1961).

Of course, the question of defining a terminal area and of deciding whether a given operation is within it or is a line haul is ordinarily a question of fact to be decided on the merits of each case, *United States* v. *Elgen*, 98 F. 2d 264, 266 (C. A. D. C. 1938), but in the case now before the court there is no such question of fact. The very point has been decided several times by the Commission in proceedings involving this very bus transfer service, and to

which Susquehanna and Appellants were parties. These are set out in the Statement filed below and need not be reprinted here. (R. 46 to R. 49 in Exhibit 2 to Statement). It is sufficient to note here that the excerpts there presented make it clear that, as a matter of *res judicata* between the parties, the bus service is an intraterminal transfer of passengers in aid of, and as an incident of, the rail service; that when Susquehanna's trains are at North Bergen, N. J. (Susquehanna Transfer), they are within Susquehanna's "terminal area *at New York* in respect of both freight and passenger service" (emphasis added), as well as that such service is within the scope of §202(c) of the Act (49 U. S. C. §302(c)).

Lest this be claimed to consist of no more than an invention of counsel, it will be worth a brief excerpt from the landmark decision in *New York Dock Railway* v. *Pennsylvania R. Co.*, 62 F. 2d 1010 (C. C. A. 3d, 1933), where the court described the Pennsylvania Railroad as

> "a common carrier operating a line of railroad whose eastern terminus *physically* is at the New Jersey waterfront opposite the city of New York *but actually—by the use of car floats and force of statute*—at stations across the river on the waterfront of Manhattan, Brooklyn, the Bronx, and other boroughs within the commercial area known as the port of New York." (62 F. 2d at 1011) (Emphasis added).

This condition, whereby the great Eastern railroads built their yards, wharves and piers on the New Jersey side of the Hudson River, and completed their transport into New York City by means of whatever device was most suitable and available for crossing the river, was recognized in *United States* v. *Elgen*, 98 F. 2d 264 (C. A. D. C. 1938), and is of course so well and widely known that any disput-

ing it would hardly be *bona fide* or colorable. Nor are the reasons why the "New York" terminals of these railroads extend to and embrace the facilities in New Jersey either obscure or mysterious. Historically, the Hudson River has been considered a vital part of the military defenses of the nation. In almost any other location, and under almost any other circumstances, the Hudson River would have been spanned, decades ago, by the low-level, inexpensive railroad bridges found hung across other great rivers of the world. So, the requirement that the largest military vessels be capable of sailing the Hudson has limited its crossing to surface vessels and to tunnels for the most part. The George Washington Bridge, the first constructed across the lower reaches of the Hudson, was built for motor vehicles; even its "second deck", originally intended for rail line service, was only this year completed—but for motor vehicles. The Brooklyn-Staten Island Bridge, now under construction across the Narrows, is the newest one authorized since the Tappan Zee at Tarrytown; a high level bridge, its relatively steep grades could never be negotiated by conventional trains. And the tunnels, first the rail tunnels of the Pennsylvania and the H. & M. Tubes, and then the vehicular Holland and Lincoln Tunnels, offered such appeal and advantage as to bring the ferryboat (once the major means of crossing) to near demise.

Thus, were it not for these physical and military considerations, it is not improbable that inexpensive bridge crossings of the Hudson may have made it practical and feasible to take New York trains physically into New York at all necessary points, at least until the spawning of the internal combustion engine and automobile completed the cycle of development of the self-propelled vehicle which, it proved, had only temporarily been hybridized into the rail-

road by such influences as the English Red Flag Act and its American counterparts.

It is for considerations such as these that railroads having their terminals and destinations "at New York" were considered to have their lines extend "into" New York by means of such non-rail means as car floats and lighters; that Susquehanna found it more feasible and useful to make the passenger transfer by contract motor coach via the Lincoln Tunnel in no way alters the application of the principle.

As heretofore observed, the number of infrastate passengers is very small; most of the users are transported to and from New York (R. 17, footnote). Hence it is idle fiction to talk about these trains as "intrastate". At most, what might be said is that they carry a few infrastate passengers along with the interstate. Their character is such that even if Congress is to be taken as having intended a reservation to the States in the sense urged by Appellants, it would hardly apply to these trains and their passengers. They argue that "though even an intrastate train may transport passengers who intend to proceed across the State line", it is the movement of the "train or ferry", not the movement or intention of the passenger, which is the determining factor (Appellants' Brief, pp. 14-15). But that is not this case. This case is one where, not only do the passengers *intend* to cross the State line, not only is their *movement* across the State line, but it is the *railroad itself* which transports them across the line, on tickets having the other State as their destination, and by means which Congress has commanded be regulated as "transportation by railroad". See the excerpt from the tariff, specifying the interstate ticket needed (R. 16).

United States v. *Elgen*, 98 F. 2d 264 (C. A. D. C. 1938), mentioned above, is of especial interest because it involved the use of a vehicle that ran on tracks and, by means of rubber-tired wheels that could be lowered into place, could also run on city streets. When it was proposed to have this vehicle run from the previous rail terminal outside the District of Columbia into the District itself, it was held in that case that *as a matter of fact* the District was outside the line's "terminal area" and that a certificate of convenience and necessity was required for the new service, not because of the vehicle's metamorphosis into a bus but because the run would amount to a "line haul". In the same year, the certificate was issued, but the issuance was challenged and enjoined; before decision on the ensuing appeal, the proponent of the service had to abandon the arrangement because of financial losses. *Arlington, etc.* v. *Capital Transit Co.*, 109 F. 2d 345 (C. A. D. C. 1939). In any event, Congress set that kind of question at rest by the enactment of the act of September 18, 1940 (54 Stat. 920), which is now 49 U. S. C. § 302.

Of the two choices, then, between the meanings to be ascribed to the provisions of section 13a, it is plain that the one which would cover Susquehanna's operation under the provisions of section 13a(1), is the proper one. "Such a reading of the statute does violence neither to semantics nor to common sense." *Callanan* v. *United States*, 364 U. S. 587, 598-599 (1961).

POINT THREE.

The construction urged by Appellants would lead to an absurd result, and if accepted would not allow the proposed discontinuance of service under either 13a(1) or 13a(2).

Prior to the enactment of section 13(a), the accepted view was that while complete abandonment of a line of

railroad, or part of a line, could only be accomplished pursuant to a Certificate of the Commission under section 1(18), whether interstate or intrastate, changes or curtailment of services were not covered by that section.*

Under that view, one method for achieving a change or discontinuance of interstate passenger service (whether a single train or all), was to apply to the regulatory agency in each of the states through which the passengers to be affected were transported. If those proceedings culminated in unsatisfactory orders, or inconsistent orders, the only remedy was by review through the state courts. If federal constitutional questions arose, they presumably would permit of review by the United States Supreme Court.** In any event, the I. C. C. had no part or function in the process.

As an administrative regulatory system, this arrangement proved to be unwieldy and unworkable. There were no time limits to the agency hearings. Their review in the courts was complicated and slow. Separate proceedings in separate states not infrequently resulted in conflicting

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* In the First Ferry Cases, *Board of Public Utility Commissioners* v. *United States*, (two cases), 158 F. Supp. 98 and 104 (D. Ct. N. J. 1957), prob. juris. noted 357 U. S. 917 (1957), dismissed as moot, 359 U. S. 957 and 982 (1959), it was decided that even though a railroad sought complete discontinuance of passenger service via one avenue on its line of railroad, that did not constitute an "abandonment" which the Commission could authorize under §1(18). The point, however, seems never to have been squarely decided by the Supreme Court, so far as our research has disclosed. See *Banta* v. *United States*, 152 F. Supp. 59 (D. Ct. N. J. 1957), dismissed 355 U. S. 33 (1957), aff'd. 355 U. S. 34 (1957), for an example of still another method unsuccessfully attempted in the search for a remedy from the adamant attitude of the New Jersey regulatory agency.

** For example, where forced continuance amounted to a taking of property without compensation or without due process of law, as recognized by *Penna-Reading Seashore Lines* v. *P. U. C.*, 5 N. J. 114, especially at 124-125 (1950). Query: whether the principle of *Griggs* v. *County of Allegheny*, 369 U. S. 84 (1962) might provide an alternate means for securing a remedy.

results. Even when changes and discontinuances were allowed, the process was so long that the interim losses often deprived the carrier of the financial ability to continue to furnish the curtailed service. (See the excerpt from *Transit Commission* at R. 22).

It was in this frame of reference (only briefly outlined above) that section 13a was proposed. In its original form, there can be no doubt of the intent that it was to apply to all cases of change or discontinuance on an interstate line of railroad, even though the change or discontinuance affected wholly intrastate service. The pattern was like that of section 13a(1), namely, a direct authorization from the Congress to the carrier to effectuate the change or discontinuance upon the expiration of the time set by notices posted, filed and served, with authority in the I. C. C. to prevent its exercise upon making the requisite findings.

In the course of consideration, this proposed section was divided into two paragraphs: 13a(1) and 13a(2). The main object remained the same in both, namely, that the I. C. C. should have the final authority, but where the operation or service was wholly intrastate, the I. C. C. was not to act until the state agency had either denied the relief, or had failed to act for 120 days (essentially, 4 months).*

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* It is worth observing here that the coverage of the version enacted is broader than that first proposed. Under the original proposal, an operation or service that was wholly intrastate was covered only if it was on a "line of railroad" that extended across a State line. As enacted, such an operation or service may be discontinued on the order of the Commission under section 13a(2), even though the line of railroad itself is wholly intrastate as well; the only limitation on Commission power is that the carrier be "subject to Part I", i.e., *engaged* in interstate commerce. Thus, an operation or service of the kind carried on by the State Belt Railroad, described in *California* v. *Taylor*, 353 U. S. 553 (1957) could be discontinued under order of the commission by the procedure set out in section 13a(2), but could not have been so discontinued under the original version as that "line of railroad" was entirely within California.

Putting to one side, for the moment, the different procedures outlined by §13a(1) and §13a(2), it is plain that the scope of the two provisions, taken together, embraces at least every instance that would have come within the coverage of the original version. Insofar as combined coverage is concerned, the common elements are those of (a), public convenience and necessity and (b) the existence of an undue burden on interstate commerce. That is to say, any change or discontinuance of passenger train service by a rail carrier engaged in interstate commerce, will inevitably be found to fall within either §13a(1) or §13a(2). Hence, any construction which would result in having a change or discontinuance fall under neither one would obviously be absurd and not within the underlying intent of Congress in enacting the entire section.

Indeed, Appellants appear to concede that discontinuance of the operation or service in dispute would be proper if if had been sought under §13a(2) (Appellant's Brief, at p. 8).*

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* The concession is ambiguously qualified: "This railroad's relief, *if it be entitled to any*, should flow from subdivision 13a(2) . . ." In his dissent below, Circuit Judge McLaughlin does not even concede coverage under §13a(2). (R. 23-26). We note, with some bewilderment, that Judge McLaughlin also dissented in the Second Ferry Cases, after §13a had been enacted.

Even so, under New Jersey decisions, Susquehanna would be faced with enforcement proceedings to compel continued operations ordered by the Board—even across a State line—until its orders were reversed on appeal in the State courts, *State* v. *N. Y. Central R. Co.*, 52 N. J. Super. 206 (Ch. Div. 1958); this would generate still another chain of litigation and confront Susquehanna with the kind of dilemma referred to by Mr. Justice Black in his dissent in *Uphaus* v. *Wyman*, 364 U. S. 388, 396 (1960), quoting Lord Mansfield:

> "'My Lords, this is a most exquisite dilemma, from which there is no escaping; it is as bad persecution as the bed of Procrustes: If they are too short, stretch them; if they are too long, lop them.'"

However, under the construction they advance, it is easy to see that section 13a(2) would not apply at all. The reason for this is that their construction depends entirely upon a narrow and literal reading of the words "train" and "ferry", and upon a disregard of the disjunctive "operation" *or* "service" as well as of the underlying intent and of the command of 49 U. S. C. §302(c).

Under their construction, discontinuance of this service cannot be accomplished under 13a(1) because the "train" does not cross a state line, and because even though the intraterminal transfer bus obviously does, they argue that the section mentions only a "train" or "ferry" and does not apply to a "bus". This argument inevitably would make section 13a(2) also inapplicable. This is because under section 13a(2), if it be assumed that Susquehanna could apply for discontinuance of the "train", it would still be unable to apply for discontinuance of the "bus". The phrasing of 13a(2) is identical, in this regard, to that of 13a(1). Hence, if the course suggested by Appellants were to be followed and if Susquehanna were to secure the permission sought, it might secure permission to discontinue the operation of the "trains", but since that permission could only apply to the "trains", it would be obliged to continue the operation of the "buses". The absurdity of this course is patent. The buses are operated to transport train passengers across the river; without "trains" there would be no passengers to transport. Yet, the buses could not be discontinued under 13a(2), not only because (as appellants argue) "buses" are not mentioned, but also because they run from a point in one State to a point in another State (which 13a(2) does not cover).

The only other theory on which appellants could construct an argument to avoid this patent absurdity would

be that Susquehanna needs no permission from anyone, State or federal, to stop operating the shuttle bus while continuing to operate the train. Appellants have never contended or conceded that the bus could be so discontinued. The reason is obvious. Without the intraterminal transfer bus, eastbound passengers going to New York would be stranded at Susquehanna Transfer in the morning, and westbound passengers would be unable to get from Manhattan to Susquehanna Transfer in the evening. So the trains would run with only local passengers, who compose only about 10% of the already light patronage.

The decision of the District Court is accordingly sound. It recognizes that the "service" is from a point in one State to a point in another State. It recognizes the obvious difference in sense between "service *by* a train" and "service *of* a train." It recognizes that the bus service is incidental to and integral with the train; it "complements" the train. The two are but the component parts of a single integrated whole. (R. 22).

Without relying in any way upon any rule of construction that would lean toward federal authority because interstate commerce is clearly involved and because Congress has expressly placed final authority in the Commission, but looking at the facts and the statute for ordinary sense and meaning, it is plain that this integrated service must be taken as a "well-coordinated and smoothly functioning plan for continuous, cooperative transportation services" between New Jersey and New York; Susquehanna does not use the buses "merely on a sporadic or occasional basis." The transfer bus "plainly is just as essential and necessary, and as available for that matter", as though Susquehanna had the physical means and legal title to move its trains across the Hudson River into Manhattan. The

circumstances show that the trains and the intraterminal buses "operate as an integral part of" Susquehanna's "transportation service for interstate passengers". See *Boynton* v. *Virginia*, 364 U. S. 454, 462-464 (1960).

POINT FOUR.

The legislative history of §13a does not support the construction advanced by Appellants.

Appellants have predicated their entire argument on what must be conceded to be a narrow and strict reading of the statute, looking only to the words and ignoring underlying purposes and objectives. The position is one rarely found convincing in the construction of statutes, for, as was said by the Chief Justice in *United States* v. *Louisville, etc. Co.*, 235 U. S. 314, 326 (1914), in connection with another amendment to the Interstate Commerce Act:

> "Indeed when the evil which it may be assumed conduced to the adoption of the amendment of §4 and the remedy which that amendment was intended to make effective are taken into view . . it would seem that the case before us cogently demonstrates the applicability of the amendment to the situation. And it needs no argument to demonstrate that the application of *the principle of public policy which the statute embodies is to be determined by the substance of things and not by names*, for if that were not the case the provisions of the statute would be wholly inefficacious, as names would readily be devised to accomplish such a purpose." (Emphasis added).

The legislative history, of course, is quite clear in its disclosure of the evil to be remedied and the purpose intended to be achieved by the enactment of section 13a.

As was stated in House Report No. 1922 (U. S. Code Congressional and Administrative News, 85th Congress, 2d. Session—1958, p. 3456):

> "The purpose of this bill is to amend the Interstate Commerce Act in order to strengthen and improve our Nation's common carrier surface transportation system so that it may better fulfill its role in meeting the transportation needs of the Nation's expanding economy and the requirements of national defense."

Further, at p. 3467, discussing the proposed section 13a, the report said:

> "A major cause of the worsening railroad situation is the unsatisfactory passenger situation. Not only is the passenger end of the business not making money—it is losing a substantial portion of that produced by freight operations."

The background is outlined at p. 3468:

> "Under the act, the Interstate Commerce Commission has jurisdiction over the complete abandonment of a line of track. The discontinuance or change of schedules of trains, (without complete abandoning of the line of track over which they operate) however, is subject to the jurisdiction of the interested States. Such local regulation of what has come to be a national problem has hampered the railroads from making some changes in their passenger train operations in line with changes in patronage, and has contributed greatly to the passenger deficit. Witnesses have not suggested that all State commissions have taken obstructive attitudes, but only that it has proved impossible to secure necessary relief in some States."

Then follows a description of the House version of proposed §13a as reported by the committee, which allowed

railroads to discontinue passenger operation or service under I. C. C. supervision so long as the line of railroad on which it took place was not located wholly within a single State, but not covering operations more local in character, such as those of a branch line or other line of railroad located solely within one State; it also noted that the committee's bill had deleted like coverage as to stations, depots or other facilities.

After conference committee study, the version enacted was reported out, and the Conference Report (*Idem*, at p. 3486-3487) explains the section in some detail, but really says nothing more than the section itself, and sheds no light on the subject here involved.

The same may be said of the floor discussions on which Appellants place such heavy reliance. "All the legislative talk only reiterates what the statute itself says" *Callanan v. United States*, 364 U. S. 587, 593 (1961).

The excerpts of the floor debate set out in the Transcript (R. 96 to R. 100) were claimed below to support the divergent positions taken on this appeal, and we suppose the most accurate statement that can be made about the excerpts is that some talk about the House bill as it stood before amendment by the committee, some talk about the Senate bill and a proposed amendment to it before the Conference Report was made, none of it talks about the Conference Committee version which was enacted (the Conference Report was on July 24, 1958 and the last floor discussion quoted was on June 27, 1958), and none of it discusses explicitly the type of interstate operation involved here.

Thus, the colloquies in the House by Mr. Harris (R. 99-100) put local trains under local supervision only if the line of railroad on which they operated were entirely

within one State. This correctly describes the House Committee version, as outlined in its report of June 18, 1958, but not the one passed.

And the colloquies in the Senate by Senator Smathers (R. 96-99) are all on June 11, 1958, relate to the Senate bill (which was not passed) and an amendment proposed to meet an objection by Senator Russell, and shows in its text that it is discussion about a different version than was passed.

Thus, in explaining the amendment then under discussion, Senator Smathers said that where a train had "its origin and destination in the same State", that train and its facilities—"specifically the terminals"—would be "completely under the jurisdiction of the State regulatory body." (R. 96-97).

Aside from the fact that the trains now before the court would not come within the category described by Senator Smathers (because their destination is New York and their terminal is New York), the fact is that 13a(2) does not put the described category "completely under the jurisdiction of the State regulatory body." On the contrary, in the case of such trains, if the State body refuses to permit the discontinuance or fails to act after 120 days, the I. C. C. may enter an order permitting it.

These points were brought out in the trial court, and the dissenting opinion suggests that a view contrary to that of Appellants would amount to a concealment of intention within the Senator's "frank commitment" (R. 24). No such element is involved, of course, because the Senator's description relates to a proposed amendment to another bill, and not to 13a as enacted.

To the extent that the floor discussion approaches the kind of operation here involved, the only pertinent state-

ment is that of Senator Smathers (R. 97-98), where he draws the line which the compromise would have set in these words:

> "We give authority to the Interstate Commerce Commission only over interstate commerce trains. We more clearly define that the public utilities commission has authority over *completely intrastate trains and facilities.*" (Emphasis added).

At an earlier point he had made explicit that by "facilities" he meant "specifically the terminals" (R. 96). Hence, if his explanations have any utility whatever, it would need to appear that Susquehanna's trains and terminal are "completely intrastate" trains and terminal.

The assertion that they are "completely intrastate" we submit, cannot be successfully made, in light of the determination, binding on the parties, that Susquehanna's terminal is New York (R. 46 to R. 49) and the fact that Susquehanna transports some 90% of its passengers between New Jersey and New York (R. 17, footnote).

In summary, then, it must be said that the floor discussions are of little aid as a guide to solving the present problem; and that the answer lies in the evil sought to be met and the means for accomplishment of that end. While extended review in detail of the floor debate would not be productive, "certain points can be made with confidence." *Maintenance of Way Employees* v. *United States*, 366 U. S. 169, 174-175 (1961).

The evil was that railroad operations going across State lines were regulated, short of total abandonment, by local agencies whose decisions were either delayed, conflicting or unreasonable; that losses from passenger operations were so severe as to consume a large part of the freight revenues; that the "obstructive attitudes" of and

the impossibility of securing necessary relief in "some States" hampered the railroads and "contributed greatly to the passenger deficit."

The remedy was to provide federal authority for the change or discontinuance of the operation or service of trains and ferries; where the train was interstate, carriers had an option to seek exclusive federal authority by the procedure of §13a(1); where it was intrastate, it had a like option under §13a(2) but only after the local agency had denied relief or failed to act.

The facts and history of this case are another replay of this sad, old, tuneless refrain; the same doleful dirge; the same progression of discords which composed the theme of the 1958 amendment.

The history outlined in the Statement (R. 31 to 39) tells what went on before. The first hearings went on from 1956 to April of 1957, at which time Senate Concurrent Resolution No. 20 (1957) was passed by the New Jersey legislature. Known as the "Forbes Resolution", it was sponsored by one of the gubernatorial candidates in that year. Though not having the force of law, and though a clear denial of due process, the state agency obeyed it and suspended further proceedings. Susquehanna was obliged to take this inaction up on appeal and secured an order equivalent to a writ of *procedendo* (25 N. J. 343). The agency then allowed some curtailment of service, and Susquehanna's appeal therefrom took another 17 months before additional relief was secured. Altogether, some three and one-half years and two appeals were involved in that first phase.

The current phase is following the same pattern. Nearly a year elapsed in the process of applying for reconsideration and for hearing and decision in the District Court;

another year will doubtless elapse in the prosecution of the present appeal. In all this time the state agency has seen fit to ignore the desperate financial plight of Susquehanna and has managed to compel it to continue an *interstate commutation service* which it lacks the power to order operated.

This, perhaps, may be the litmus test by which a particular operation or service may be identified as coming within §13a(1) or §13a(2): namely, is the operation or service one which, aside from §13a, a State acting within the full scope of its governmental power could order to be operated?

Assuming that, we have no doubt that if the local public necessity and convenience justified it, the New Jersey board has the *power* to order Susquehanna to operate a train between Butler, N. J., and Paterson, N. J., for example; or between Paterson, N. J. and Babbitt, N. J., to serve the needs of *intrastate* passengers travelling between such points. That power could be exercised provided the exercise were reasonable. See *Pennsylvania Railroad Co.* v. *Public Utility Commissioners*, 11 N. J. 43, 53-55 (1952); and *Erie R. R. Co.* v. *State*, 51 N. J. Super. 61, 66-67 (App. Div. 1958). That is not this case.

But the New Jersey board does not have the power, no matter how great the need or how reasonable its exercise, to order the operation of a train to Susquehanna Transfer (which is a transfer point and not a station, R. 47) and the transport of the passengers across the Hudson River to and from New York. That is this case.

The *sense* of the distinction between §13a(1) and §13a(2) is that an operation or service which comes within §13a(2) must at least be one which a State otherwise has the power to direct be performed or furnished; the provision grants

nothing to the States which they do not already have. It merely allows them to have the first consideration of something which must otherwise be within their power. If a State cannot, for obvious reasons, order an *interstate* operation or service, then that subject falls under §13a(1) and not §13a(2), and the State has not the power to deny its change or discontinuance.

POINT FIVE.

Appellants' arguments on miscellaneous aspects are incorrect.

a. The construction placed on §13a (1) by the I. C. C. in this case is not a construction that may be read into the statute on this appeal.

Appellants try to lift themselves by their own boot straps. They argue in their brief (page 7 and page 16) that the I. C. C. *in this case* construed the statute in the manner urged by Appellants, and that this administrative interpretation is entitled to weight.

This contention is frivolous. It is settled that the I. C. C., in passing on an application filed with it, may incidentally pass upon the question of the applicability of a statutory paragraph to the subject of the application, but the actual decision thereof is a question for the court.

As was stated in *Powell* v. *United States*, 300 U. S. 276 (1937):

> "The function of the court is to construe that paragraph; that of the commission is to determine whether the project, if it is one covered by the paragraph, is in the public interest."

b. Appellants' emphasis on the use of the words "train" and "ferry", and on the absence of the word "bus", is misplaced.

This argument runs throughout Appellants' brief, and it largely consists of pointing to the inclusion of an interstate "ferry."

The reason for the inclusion of a "ferry" separate and apart from the trains served by it, is so well known as to demonstrate the invalidity of the argument. The problem of obstructionist attitudes of State agencies was not limited to the matter of discontinuing some of the Hudson River ferries, but the ruling in the First Ferry Cases evidently was the straw that broke the camel's back and induced enactment of §13a.

The Erie and the New York Central, as the Ferry Cases show, were interested in discontinuing the ferries themselves, separate and apart from the trains; besides, as we all know, those ferries were not the kind of fully integrated service that Susquehanna's intraterminal bus transfer is. Those ferries served all comers. Passengers walking in off the street, automobiles and trucks, as well as persons riding Erie and Central trains, were carried across the river. Hence, to discontinue the ferries, separate and apart from the trains, it was essential that "ferry" be particularized.

That situation does not obtain here. The intraterminal bus does not run on a schedule independent of the trains, nor does it carry any but rail-passengers. As the record shows,

> "No tickets are sold to or from Susquehanna Transfer, and it is not intended that any passenger should either start or terminate their trips at such point, but rather that its use should be limited solely to the transfer of passengers from train to bus or bus to train" (R. 47).

As the Statement filed with the I. C. C. discloses, the operation or service to be discontinued was the *entire* run between Butler, N. J., and New York (R. 29-30; and see Timetable at R. 45). As the timetable shows, "Train 919" starts at the Port Authority Bus Terminal at 4:50 P. M. and arrives at Butler at 6:22 P. M., with motor coach connection at Susquehanna Transfer. And, as the majority opinion notes (R. 16), the published tariff specifies that the "Motor Coach Terminal Service—New York, N. Y.", is "available only to passengers holding tickets reading as described in paragraph 1 below . . . to or from stations on the New York, Susquehanna and Western Railroad Company, Babbitt, N. J. and stations West thereof, on the one hand, and *New York, N. Y.* via the Susquehanna Transfer, N. J., on the other." (Emphasis added).

If Susquehanna had posted and filed notices seeking discontinuance of the bus service *alone*, separate and apart from the whole run, there might be some color to the argument, but as the operation or service involved is the three trains, which serve New York, and since the bus service is integral and required to be regulated as though it were a train by 49 U. S. C. 302(c), the contention is without merit.

c. The fact that the enactment of §13a was stimulated by the Hudson River ferry problem provides no basis for not giving the section the full scope of its actual coverage.

This argument is set out in the dissenting opinion (R. 23), and it is pressed in Appellants' Brief (pages 11-12). We find its presentation disturbing because it suggests that general legislation, perhaps brought to a head by some one shocking situation, is to be treated as a private and special law not available to others.

We submit that such history, if true, is to be wholly disregarded as a guide to construction, and that the correct attitude is to apply basic principles in the full scope of their generality.

As was said in a different context:

> "What we there said" [NAACP *v.* Alabama, 357 U. S. 449, 462] "was not designed, as I understood it, as a rule for Negroes only. The Constitution favors no racial group, no political or social group."
>
> Dissent, per Mr. Justice Douglas in *Uphaus* v. *Wyman*, 364 U. S. 388, 406 (1960).

If necessary restaurant services at a bus terminal are to be regarded as an integral part of a transportation service for interstate passengers for the purposes of 49 U. S. C. §3(1) and §316(d), *Boynton* v. *Virginia*, 364 U. S. 454 (1960), then the same principle which recognizes functional necessity and integral operation must be applied to §13a.

If physical and operating conditions require that the motor truck movement of goods to and from airfields be regarded as "air transportation", *City of Philadelphia* v. *Civil Aeronautics Board*, 289 F. 2d 770 (C. A. D. C. 1961), then like considerations require that Susquehanna's transport of passengers by motor coach on rail tickets to and from New York be recognized as covered within §13a(1).

If physical and practical necessities compel recognition of lighterage facilities as being "the equivalent of tracks" in the New Jersey-New York area for the purposes of 49 U. S. C. 1(18), *United States* v. *Elgen*, 98 F. 2d 264, 266-267 (C. A. D. C. 1938), we submit that transfer services executed by motor coach within the New York terminal must also be recognized as the equivalent of a train for the purposes of §13a.

d. This court has attempted no final definition for a "train" for all statutes and for all purposes.

Appellants rely here, as they did in the District Court, on what they claim is a judicial definition of a "train", to wit, "an engine and cars which have been assembled and coupled together for a run or trip along the road", citing *United States* v. *Erie R. R.*, 237 U. S. 402 (1915). A reading of that case discloses, however, that the quoted phrase was not intended as a "definition" in any sense. The case involved the applicability of certain requirements of the Safety Appliance Act, which depended on whether the activities were merely switching operations or the actual movement of the trains. The factual problem there arose because Erie had three large yards on the west bank of the Hudson, some 2 to 3½ miles apart, between which it moved its freight cars. The question before the court therefore was whether these were merely "switching operations" (in which case the particular requirements of the Act would not apply), or whether they were "train movements" (in which case the requirements would apply). No question of the nature now under consideration was there involved or decided, and the passage relied on by Appellants does not even pretend to be a definition, even for the purposes of that case.

Conclusion.

For the reasons set out in the foregoing brief, Susquehanna submits that the Appellants have failed to carry their burden on this appeal and have shown no error in the ruling appealed from, wherefore it should be affirmed.

And should the Court be of a different view, it is further submitted that the I. C. C. did have jurisdiction under one paragraph or the other of section 13a, and that in that event there should accordingly be, not a reversal, but a modification with directions for further proceedings calculated to achieve a prompt determination of the merits.

Respectfully submitted,

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APPENDIX

Interstate Commerce Act, Excerpts from § 1; 49 U. S. C. § 1.

SEC. 1. (1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid, except as otherwise provided in this part;

(b) or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this part except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "person" as used in this part includes an individual, firm, copartnership, corporation, company, association, or joint-stock association; and

includes a trustee, receiver, assignee, or personal representative thereof.

* * * * * * *

(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this part shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this part over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. Nothing in this paragraph or in section 5 shall be considered to prohibit the making of contracts between carriers by railroad subject to this part, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

* * * * * * *

Interstate Commerce Act, § 13a; 49 U. S. C. § 13a.

SEC. 13a. (1) A carrier or carriers subject to this part, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the sub-

ject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission, by order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than four months beyond the date when such discontinuance or change would otherwise have become effective. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice

as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph.

Interstate Commerce Act, § 202; 49 U. S. C. § 302.

SEC. 202. (a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(b) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

(c) Notwithstanding any provision of this section or of section 203, the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—

(1) to transportation by motor vehicle by a carrier by railroad subject to part I, or by a water carrier subject to part III, or by a freight forwarder subject to part IV, incidental to transportation or service subject to such parts, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad, as transportation subject to part III when performed by such water carrier, and as transportation or service subject to part IV when performed by such freight forwarder;

(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, an express company subject to part I, a motor carrier subject to this part, a water carrier subject to part III, or a freight for-

warder subject to part IV, in the performance within terminal areas of transfer, collection, or delivery service; but such transportation shall be considered to be performed by such carrier, express company, or freight forwarder as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water, or the freight forwarder transportation or service, to which such services are incidental.

Excerpts from Rules of Interstate Commerce Commission, 49 Code of Federal Regulations.

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§1.2 *Liberal construction.* The rules in this part shall be liberally construed to secure just, speedy and inexpensive determination of the issues presented.

• • • • • • •

§1.4 *Communications and pleadings generally—*

• • • • • • •

"(g) *Disposition of; when defective.* In any proceeding when upon inspection the Commission is of the opinion that a pleading, document, or paper tendered for filing does not comply with this part or, if it be an application, does not sufficiently set forth required material or is otherwise insufficient, the Commission may decline to accept the pleading, document, or paper for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

• • • • • • •

§1.5 *Definitions.* As used in this part:

• • • • • • •

(d) The term "pleading" means a complaint, answer, reply, application, protest, motion (other than motion orally made at hearing or argument), petition, document supplementing oral hearing as described in §1.86 and all documents filed under modified and shortened procedure.

• • • • • • •

§1.19 *Pleadings part of record.* Recitals of material and relevant facts in a pleading filed prior to oral hearing in any proceeding, unless specifically denied in a counter-pleading filed under these rules, shall constitute evidence and be a part of the record without special admission or incorporation therein, but if request is seasonably made, a competent witness must be made available for cross examination on the evidence so included in the record. Pleadings may contain specific references to or quotation from the tariffs or schedules containing the several rates, fares, charges, schedules, classifications, regulations or practices alleged to be material.

§1.20 *Amendments.* Leave to file amendments to any pleading will be allowed or denied as a matter of discretion.

• • • • • •

§1.23 *Replies*—(a) *Time for filing.* Except that a reply to a reply is not permitted, and except as otherwise provided in paragraph (b) of this section and respecting answers (§1.35 (c)), modified and shortened procedure (§§1.44 (c) and 1.51), and briefs (§§1.92 and 1.93), an adverse party may file and serve a reply to any pleading permitted under the rules in this part within 20 days after filing at the Commission.

• • • • •

§1.27 *Formal complaints; joinder*—(a) *Causes of action.* Two or more grounds of complaint concerning the same principle, subject, or state of facts may be included in one complaint, but should separately be stated and numbered.

• • • • • •

§43.1 *Scope of rules in this part.* The rules in this part govern the procedure to be followed by carriers subject to part I of the Interstate Commerce Act which, under and pursuant to the provisions of section 13a of said act, file

with the Commission a notice under paragraph (1) of said section or a petition under paragraph (2) thereof with respect to a proposed discontinuance or change, in whole or in part, of the operation or service of any train or ferry.

§43.2 *Definitions.* As used in this part:

(a) The term "act" means the Interstate Commerce Act, as amended.

(b) The term "notice" means a notice as provided for in paragraph (1) of section 13a.

(c) The term "petition" means a petition filed with the Commission under the provisions of paragraph (2) of section 13a for authority to effect a discontinuance or change.

§43.3 Form and style of notice.

The notice shall be reproduced by printing, multigraphing, or mimeographing (or by any other process provided the copies are clearly legible) on paper not less than 8½ by 11 inches, with the words, "Notice of proposed change (or discontinuance, if appropriate) of service" printed in large bold-face type near the top. If printed, nothing less than 12-point type shall be used in the remainder of the notice.

§43.4 Contents of notice.

A separate notice shall be given for each discontinuance or change of service. A single notice may include more than one train or ferry except that unrelated trains or ferries shall not be made the subject of a single notice. Each notice shall set forth the following information:

(a) Exact corporate name and general office address of the carrier.

(b) The number and name or other description of the train or ferry with respect to which a discontinuance or change of operation or service is proposed, the name of each station, depot, or facility affected thereby, and the termini between which the train or ferry operates.

(c) The date on which the discontinuance or change of operation or service is proposed to become effective.

(d) Advice to the public that persons desiring to object to the proposed discontinuance or change should notify the Interstate Commerce Commission, at Washington, D. C., of such objection and the reasons therefor at least 15 days before the effective date of the proposed discontinuance or change.

§43.5 *Information required with notice.* With each notice of a proposed discontinuance or change of operation or service, there shall be filed with the Commission a "Statement in Relation to Proposed Discontinuance or Change of Train or Ferry Service" which, in the body thereof or in exhibits attached thereto and referred to therein, shall contain the following:

(a) Exact corporate name and general office address of the carrier proposing the discontinuance or change.

(b) Name, title, and post office address of counsel or officer to whom correspondence in regard to the notice should be addressed.

(c) Complete description of the present service of the train or ferry involved and of the discontinuance or change of operation or service proposed.

(d) Complete statement of the reasons for the proposed discontinuance or change of operation or service.

(e) The names of all railroads interchanging passengers or freight with the subject train or ferry, and the points of such interchange.

(f) Description of other common carrier service, including service of the subject carrier, of the same kind (passenger or freight) rendered by the trains or ferries involved, between and at the points described in the notice and other common carrier service available in the immediate territory.

(g) A statement of the traffic transported on trains or ferries involved for each of the last 2 calendar years and for the part of the current year for which such information is available. If information for such periods is not submitted, explanation must be given as to why such information was not submitted. When a notice involves more than one train or ferry, the traffic of each should be segregated to the extent practicable. If the proposed discontinuance or change involves less than all of the stations served by a train or ferry, to the extent such information is available segregation should be made of the traffic transported to and from each station which will be affected.

(h) Financial results of operating the trains or ferries involved during the period or periods embraced in the statement submitted pursuant to paragraph (g) of this section, segregated in the same manner and to the same extent as required by that paragraph.

(i) A copy of the carrier's general balance sheet statement as of the latest date available; and of its income statements for each of the last two calendar years and for that portion of the current year for which such information is available.

(j) A certificate that a copy of the notice and of the "Statement in Relation to Proposed Discontinuance or Change of Train or Ferry Service" has been mailed to the Governor and railroad regulatory body of each State in which the subject train or ferry is operated and that such notice has been posted in a conspicuous place in each station, depot, or other facility involved, including each ferry and each passenger car on trains affected; which certificate shall include information of the date or dates on which the notice and statement were mailed and the date or dates on which the notice was posted as aforesaid and that a copy of the notice and statement were served upon the Assistant Postmaster General, Bureau of Transportation, Washington 25, D. C., and the Railway Labor Executives' Association, Washington 1, D. C.

(k) Map showing the geographic situation of the line over which the train operates, or, if a ferry, the route traversed. The map should show the line or route clearly, by color or otherwise, and the stations thereon, on a sheet not smaller than 8½ x 11 inches. Three copies of the map should be submitted unbound for use of the Commission, in addition to those attached to the statement.

§43.6 *Petition.* Petitions for authority to effect a discontinuance or change of the operation or service of a train or ferry shall contain in the body thereof or in exhibits attached thereto and referred to therein, the information required by paragraph (b) of §43.4, that required by §43.5 excepting paragraph (i) thereof, and in addition the following:

(a) The date on which the petition or application for discontinuance or change in the operation or service of the train or ferry was filed with the appropriate State authority.

(b) Identification of the State authority with which such petition or application was filed.

(c) Description of the action, if any, taken by such State authority on the petition or application filed with it.

(d) To be filed only with the original of the petition to the Commission, copy of the record made before the State authority, including copies of the application or petition to it, transcript of any oral hearing, and decision and order, if any.

§43.7 *Execution.* The original copy of the statement required by §43.5 and of a petition as described in §43.6 shall be signed in ink by an executive officer of the carrier having knowledge of the matters and things therein set forth. Persons signing the statement or petition shall also sign a certificate in form as follows:

..... hereby certifies that he is the
(Name)

..... of the
(Title)

..... petitioner
(Corporate name of petitioner)

herein; that he has been authorized by proper corporate action on the part of said petitioner, or by the proper court, to execute and file with the Interstate Commerce Commission the foregoing statement (or petition); that he has carefully examined all of the statements referred to in said statement (or petition) and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein; and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

(Signature)

Dated this ..... day of ..... , 19.....

NOTE: A false statement is punishable by law.

43.8 Filing; copies.

As applicable, 8 copies of the notice and an original and 7 copies of the accompanying statement, or an original and 7 copies of the petition shall be filed with the Secretary of the Commission, Washington, D. C. Each copy of the statement or petition shall bear the dates and signatures that appear in the original and shall be complete in itself; but the signatures in the copies may be stamped or typed.